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U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536

File: WAC 02 040 55426 Office: CALIFORNIA SERVICE CENTER

Date: **JAN 06 2004**

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(1)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(1)(b)

ON BEHALF OF PETITIONER:


**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to him for entry of a new decision.

The petitioner is a [REDACTED] California designer and manufacturer of capacitors with 340 employees and a gross annual income in excess of \$92,000,000. The petitioner seeks to employ the beneficiary for three years as an applications engineer. The director denied the petition, finding that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and other documentation. Counsel asserts that the proffered position is akin to that of a computer software engineer, and should be found to be a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner provided the following list of duties in the original filing:

1. Generate product drawings and specifications for manufacturing and sales support;
2. Coordinate with the Engineering and Production departments to assist in product designs and testing in order to characterize and confirm performance;
3. Coordinate with the Quality Organization department for product qualification and the generation of applicable performance and reliability data. In addition assist in product related customer complaints, failure analysis, and corrective actions;
4. Answer customer inquiries regarding the technical aspects of ceramic capacitors and their application; and
5. Assist the Product Manager in training and the direction of the sales force in technical aspects of the product line and tactical aspects of the marketing/sales plan.

Upon request by the director for further details about the proposed duties, the petitioner furnished an expanded description:

1. Providing the sales force with technical support for the promotion and sale of existing new products. The person is a liaison between customers and the engineering, quality, and manufacturing departments. (30%)
2. Provide application specific data to customers, technical data sheets, application notes, and provide technical product training to key personnel. (20%)
3. Review customer specifications and transfer requirements to internal systems. (20%)
4. Help in the design and introduction of new products and improving existing ones. (20%)
5. Evaluate and implement new product, equipment, and process. (10%)

The petitioner added that the job requires knowledge of electrical engineering and circuit theory, ceramic passive components,

technical marketing, and computer skills. The petitioner requires an individual with at least a bachelor's degree in electrical engineering or its equivalent. The record reflects that the beneficiary holds a bachelor of science degree in electrical engineering from Purdue University.

The director denied the petition on February 11, 2002, because the job does not require professional skills. On appeal, counsel likens the proffered position to that of a computer software engineer, which counsel asserts is a specialty occupation.

Citizenship and Immigration Services CIS often consults the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for definitive guidance regarding classification of positions. According to the 2002/2003 edition of the *Handbook*, which states that electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment, the proposed duties appear to be those of an electrical engineer. Since the beneficiary would be involved in the design, manufacture, improvement, and customer application of capacitors, not computer software, the duties of the offered position are not those of a computer software engineer, as stated in counsel's brief. The *Handbook* notes that almost all employers of engineers require a bachelor's degree for entry-level positions. The evidence on record establishes that the proffered position meets the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

It should be noted that the *Handbook* description of engineer states that the District of Columbia and all fifty states usually require licensure for engineers who offer their services directly to the public. In addition, the Professional Engineers Act sets forth licensure regulations for the practice of engineering in the state of California. An engineer may practice in his or her own right using the title of "Professional Engineer" only after meeting all the requirements for registration as a professional engineer. The Professional Engineers Act also allows subordinate engineers to perform duties under the supervision of a registered professional engineer. There is no information on the record, however, with regard to whether the beneficiary has a license to perform the duties of an engineer in the State of California. Without further consideration of this issue, it is not established on the record that the beneficiary is qualified to perform the duties of the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has established certain criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A) with regard to whether the proffered position is a specialty occupation; however, the issue of whether the beneficiary is qualified to perform the job is not resolved. The petition is remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position. The director may request any additional evidence deemed necessary to assist him with his determination.

**ORDER:** The director's decision is withdrawn. The matter is remanded for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.